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WATER RIGHTS  
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5-10-02  
continued

CC. Attorney General Mark Shurtleff  
Governor Mike Leavitt  
Gayle McKeachnie, Attorney

RESPONSE TO THE NOTICE AND PETITION a 2 page copy enclosed

WHEREAS, I am a valid water user in good standing and have not been represented by anyone and in fact have been excluded from any and all Ashley Creek Distribution System who also excluded the Alta Ditch, Inc..

I find the Notice and Petition substantively inadequate and defective, and does not fulfill the requisite, lacks legal efficacy to enforce, lacks legal authority for enforcement.

WHEREAS, the Utah Statutes Provide, in Title 73-2-1, the Powers Duties and Qualifications for Duties, etc. also, 73-2-1, Powers & Authority, also, 73-2-1.2, also, chapter 3, 4, and 5, wherein it states, that the State Engineer will be responsible for the General Administration of all the waters in the State and Measurement, Appropriation, Apportionment and Distribution and among other duties is for the State to Supervise in the most economical way and in Title 73-2-1.2 it states, nothing contained in this act shall modify, repeal or impair the powers or duties of the State Engineer relating to the Administration, Appropriation, Adjudication and Distribution of the State of Utah as are conferred upon him pursuant to Title 73, or the provisions of any other laws, also it states in Chapter 5 that if, in the judgment of the State Engineer or the District Court, it is

necessary to appoint a water commissioner for the distribution of the waters from any river system or water course, the commissioner shall be appointed for a four year term by the State Engineer and goes on to outline the Procedure, Responsibility, Supervision, and the Direction to the commissioner. Also see Title 63-46b-14, Judicial Review-exhaustion of Administrative Remedies. Also, Constitution of Utah Article V, Section 1. Also, United States Constitution Separation of Powers, One branch is not permitted to encroach on the domain or exercise the powers of another branch. See US Constitution I-III, see also, Power (constitutional powers), 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup>, 23<sup>rd</sup>, 24<sup>th</sup>, and 26<sup>th</sup>, amendments to the U.S. Constitution can be enforced by legislative provisions.

The fore-mentioned in the letter serves as Prima Facia evidence that the appointment of the water commissioner in the past has been unconstitutional and wrongfully appointed by The Eighth District Court and has interfered, impaired, encroached on the powers and duties of the State Engineer. The Courts should have refrained from entering the case, they should have had Judicial Self-Restraint and should have Exhausted all Administrative Remedies and Statutory Obligations. See Primary Jurisdiction. Has the Court infringed, Encroached, impaired, intruded, in the rights of others?

WHEREAS, I have been deprived and refused a grievence hearing by the Executive Committee and the Ashley Water Users Central Committee and the Office Manager and could not petition the Eighth District Court with John R. Anderson, Judge, on the bench, because of a personal conflict of interest, I deem him Biased and Prejudiced and he should disqualify himself to hear the Case along with Judge Lynne Payne. Therefore, I recuse

both Judges and respectfully request that they disqualify themselves from hearing this case and petition, with all due respect.

#### WATER RIGHTS

#### ADJUDICATION, ADMINISTRATION, DISTRIBUTION, AND SUPERVISION

Attorney for the Petitioner, Gayle McKeachnie in a letter stated that the Primary Rights of Ashley Creek Decree have been modified by Contracts. Have these Contract Rights Been Recorded, Adjudicated, Appropriated, and Certified? (The Bureau of Reclamation Contracts of 1958-64 Vernal Unit, Jensen Unit of the Central Utah Project.) If so, where are they? Have they been through Administrative Process of Law?

The Prima Facia evidence shows that the Court has usurped the Authority, Power, Duties, obligations, and Supervision and have Infringed upon, Encroached upon, impaired the Administrative Obligation of the State Engineers' Office and the Executive Department of the Utah State Government. The Court has not refrained from entering the Case until the State has fulfilled its' Statutory Obligation in the Utah State Code created by the Utah State Legislature (specifically Title 73 & Chapter 5). The Appointment of Water Commissioner.

#### DELIVERY OF ASHLEY CREEK WATER

The delivery of Ashley Creek Waters is a sham. The water handlers are unqualified, they are not trained, they are not organized, they are not supervised or directed by the State Engineers' office. Some are elected to office, some are appointed without qualifications as if in a popularity contest by family members, buddies, trying to create a power base which they can dominate. The incompetence is atrocious.

.The Contracts with the Bureau of Reclamation and the Ashley Creek Users do not work, have not worked, since they were signed originally. The evidence suggests that they have been breached by the signing parties as far as the Exchange and Delivery of Exchange Water is concerned.

The Users below the Steinaker Service Canal get a lion share of Primary flow water and Storage Waters in comparison to the Users above the Steinaker Service Canal are shorted About 50% of what the lower Users get, also, the pumping of Red Fleet Waters to affect the exchange is untimely and is not done when the waters are needed. Also, Ashley Valley Water and Sewer Improvement Districts' pipeline, serving their own customers, Maeser Water District customers, Jensen Water District, Vernal City customers, Duane Johnson Rights, both Culinary and Supplementary, Secondary waters, from Ashley Spring which is (Primary Natural Flow ). The above mentioned Deliveries from Ashley Spring exceeds their Rights and the Exchange is not effectual as per contract in a timely manner. Also, the high mountain storage reservoirs owned by Ashley Valley Reservoir Company are turned on too early, the waters are wrongfully misdelivered, and not properly accounted for, draining the reservoirs prematurely and not saving the water for late summer use.

The River Commissioner in a dictatorial status given him by the Court sometimes pulls too much water (more than is needed to fulfill the orders) and then wastes it and stores it in Steinaker Reservoir. This is exchange water to be used above the service canal and is lost for that use. Those Users above the Steinaker Service Canal are the losers and shorted of their entitlement. The Delivery handled by Ashley Water Users Association (Central Committee is unjustly constituted) is unfair, unjust, unlawful, because of Breach

of Contracts. Therefore the Canal Companies cannot deliver the water to their Users equitably, with parity so some get more than their share and others much less than their share. Entitlement is one thing and delivery is another, and deliveries are not being made in accordance with entitlement.

We used to run Ashley Creek in a splitter system by percentages in accordance with the Decree, each water user would have his opening set in the dividing weir in accordance with his percentage, then came along contracts with storage waters, Ashley Reservoir Company storage waters, Steinaker Reservoir storage waters and exchange waters. Thus the birth of the call water system, and that is the way the delivery system is now operated calling in your orders. Entitlement now is based on allotments and is calculated on the bases of anticipated flows and storage water anticipated, so many hours per share for each user. THE DELIVERY SYSTEM AND METHOD USED IN ASHLEY VALLEY ABOVE THE STEINAKER SERVICE CANAL JUST DOES NOT WORK, AND IS ABSOLUTELY UNACCEPTABLE .

Has the Executive Department of the Utah State Government abandoned us and their duties? Where is the Governor? Where is the Attorney General? Where is the State Engineer? Where is the water that we are entitled to in Ashley Valley from Ashley Creek? WHERE IS JOSEPH B. HACKING, COMMISSIONER? ARE THEY ON THE JOB? THE ANSWER IS NO! Out of the controversy and contention according to Ashley Creek Distribution System, Central Committee, Ashley Water Users Association, the Prima Facia evidence in the minutes show that Joseph Hacking expressed his views,

frustration, and proposals. He was accusatory, emphatic, and was dismissed from the meeting at 2:25 p.m. April 12, 2002. The minutes in fact shows chaos and impropriety. Later Joseph Hacking was arrested by the Sheriff of Uintah County and thrown in Jail, without bail and put in maximum security for 23 hrs per day and later was sent to Provo for psychiatric analysis. He made the statement in his annual report on page 26 "I will continue to have this lenient attitude until my BOSS, the Eighth District Court, orders me to change my way of doing things. At that time, I will do what my BOSS tells me to do." I visited Joe in Jail 3 times with special permission from the Sheriff and I found him rational in every way considering he was incarcerated in maximum security. I went back and interviewed most of those in the April 12<sup>th</sup> meeting and they related to me that Joe was very hyper, frustrated, and emphatic.

I, myself, about one year ago, trying to defend my property, and rights, over a squabble about water I was arrested and incarcerated by a deputy sheriff, my wife bailed me out in two hours. The arresting officer charged me with everything in the book. I defended myself in the Court action. When the County Attorney got it she dismissed all the charges except one small infraction, of which I pleaded no contest, interfering with an officer.

Is the Executive Department of Utah State Government in violation of their oath? Are they malfeasance, misfeasance, nonfeasance, dereliction of duty?

LYLE MCKEACHNIE

